

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 SALVADOR MURRIETA-
12 ESCANUELA,

Plaintiff,

13 vs.

14 CITY OF CALEXICO, CALEXICO
15 POLICE OFFICER PETER WEST,
16 CALEXICO POLICE OFFICER ERIC
HACKET, CALEXICO POLICE
CHIEF JIM NEUJAHR, and DOES 1
to 20, inclusive,

17 Defendants.

CASE NO. 11cv753-WQH-PCL
ORDER

18 HAYES, Judge:

19 The matter before the Court is the Motion to Dismiss filed by Defendant City of
20 Calexico (“Defendant”). (ECF No. 20).

21 **BACKGROUND**

22 On April 11, 2011, Plaintiff initiated this action by filing a Complaint alleging
23 civil rights violations under 42 U.S.C. § 1983, state civil rights violations, and tort
24 claims. (ECF No. 1). Plaintiff alleges that “... on October 29, 2009 ... [Defendant]
25 maliciously, forcibly, and unlawfully assaulted, battered, tasered, seized and arrested
26 Plaintiff.” *Id.* ¶ 7. On August 15, 2011, Defendant filed an Answer to the Complaint.
27 (ECF No. 4).

28 On March 1, 2013, Plaintiff’s counsel, Mary F. Prevost, filed an Ex Parte Motion

1 to Withdraw as Attorney (ECF No. 13). Prevost stated that Plaintiff caused her to
2 become “unable to prosecute this case, [and] unable to respond in a timely manner to
3 defense counsel’s discovery request.” (Declaration of Mary F. Prevost, ECF No. 13-2
4 ¶ 3). On March 11, 2013, the Court granted Prevost’s Motion to Withdraw as Attorney.
5 (ECF No. 15).

6 On April 25, 2013, Plaintiff filed a Notice Re Desire to Proceed to Trial Pro Se
7 Until New Counsel is Found, and Motion for Extension of Time to Find New Counsel.
8 (ECF No. 16). On May 1, 2013, the Court granted Plaintiff’s Motion for Extension of
9 Time to Find New Counsel, and ordered Plaintiff to notify the Court as to whether he
10 had retained counsel or would continue pro se no later than July 25, 2013. (ECF No.
11 17). The Court also ordered that the proposed pretrial order was to be filed by August
12 26, 2013, and the Pretrial Conference was to be held on September 27, 2013. *Id.*

13 Plaintiff failed to respond to the Court’s May 1, 2013 Order. Plaintiff also failed
14 to appear at the Pretrial Conference on September 27, 2013.

15 On October 15, 2013, Defendant filed a Motion to Dismiss the Complaint
16 pursuant to Federal Rule of Civil Procedure 41(b). The docket reflects that Plaintiff
17 filed no opposition.

18 DISCUSSION

19 A district court may properly grant an unopposed motion pursuant to a local rule
20 where the local rule permits, but does not require, the granting of a motion for failure
21 to respond. *See Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995). Civil Local Rule 7.1
22 provides: “If an opposing party fails to file the papers in the manner required by Civil
23 Local Rule 7.1.e.2, that failure may constitute a consent to the granting of a motion or
24 other request for ruling by the court.” S.D. Cal. Civ. Local Rule 7.1(f)(3)(c).
25 “Although there is ... a [public] policy favoring disposition on the merits, it is the
26 responsibility of the moving party to move towards that disposition at a reasonable
27 pace, and to refrain from dilatory and evasive tactics.” *In re Eisen*, 31 F.3d 1447, 1454
28 (9th Cir. 1994) (affirming grant of motion to dismiss for failure to prosecute); *see also*

1 *Steel v. City of San Diego*, No. 09cv1743, 2009 WL 3715257, at *1 (S.D. Cal., Nov. 5,
2 2009) (dismissing action pursuant to Local Rule 7.1 for plaintiff's failure to respond to
3 a motion to dismiss).

4 The docket reflects that Plaintiff was served with the Motion to Dismiss by mail
5 at the only address he has listed on the docket – P.O. Box 4640, Calexico, California,
6 92232-4640. (See ECF No. 20-3). The Motion to Dismiss and the Court's docket
7 reflect that a hearing on the Motion to Dismiss was noticed for November 18, 2013.
8 Civil Local Rule 7.1 provides: "each party opposing a motion ... must file that
9 opposition ... with the clerk ... not later than fourteen (14) calendar days prior to the
10 noticed hearing." S.D. Cal. Civ. Local Rule 7.1(e)(2). The docket reflects that Plaintiff
11 has failed to file an opposition to the Motion to Dismiss. The Court concludes that "the
12 public's interest in expeditious resolution of litigation," "the court's need to manage its
13 docket," and "the risk of prejudice to the defendants" weigh in favor of granting the
14 Motion to Dismiss filed by Defendants for failure to file an opposition. *Ghazali*, 46
15 F.3d at 53.

16 CONCLUSION

17 IT IS HEREBY ORDERED that the Motion to Dismiss filed by Defendant (ECF
18 No. 20) is GRANTED. The Complaint is DISMISSED without prejudice.

19 DATED: January 9, 2014

20 
21 **WILLIAM Q. HAYES**
22 United States District Judge
23
24
25
26
27
28